



[BILLING CODE 4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

Docket No. FAA-2002-13236

Aviation Safety Action Program

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability; request for comments.

SUMMARY: The FAA is proposing to amend Order 8000.82 that designates information provided to the agency from a voluntary Aviation Safety Action Program (ASAP) as protected from public disclosure in accordance with the provisions of the FAA regulations related to the protection of voluntarily submitted information. The FAA is required to protect the information from disclosure to the public, including disclosure under the Freedom of Information Act (FOIA) or other laws, following issuance of such order. The proposed designation would apply to air carriers, repair stations, or other entities who have an FAA-accepted ASAP, and their covered employees. The intent of this action is to encourage participation in the ASAP.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Send comments identified by Docket Number FAA-2002-13236 using any of the following methods:

You may send comments identified by docket number FAA-2002-13236 using any of the following methods:

- *Federal eRulemaking Portal*: Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax*: 202–493–2251.
- *Mail*: U.S. Department of Transportation (DOT), Docket Operations, M-30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery*: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Privacy*: DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL– 14 FDMS), which can be reviewed at www.dot.gov/privacy.
- *Docket*: Background documents or comments received may be read at <https://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Randy McDonald, Flight Standards, Air Transportation Division, Air Carrier Training and Voluntary Safety Programs Branch, Federal Aviation Administration by email at: randy.mcdonald@faa.gov; phone: 202-267-8166.

SUPPLEMENTARY INFORMATION:

I. Overview of ASAP.

On September 3, 2003, the Federal Aviation Administration (FAA) issued Order 8000.82, which designated information voluntarily provided under the Aviation Safety Action Program (ASAP), described in FAA Advisory Circular 120-66B, as protected

from public disclosure.¹ This includes disclosure under FOIA (5 U.S.C. 552) or other laws. The designation intended to encourage participation in the ASAP by air carriers that operated under 14 CFR part 121 and domestic repair stations certificated under 14 CFR part 145 that have an FAA-accepted ASAP and their covered employees.

The FAA is proposing to issue Order 8000.82A, which amends and expands Order 8000.82, by designating as protected from public disclosure information submitted to the agency by a larger group of entities (“eligible entities” as defined in AC 120–66C, Aviation Safety Action Program). The information voluntarily submitted by the eligible entities, as described below, would be protected from public disclosure in accordance with the provisions of part 193. In accordance with § 193.11(d), the FAA is publishing this proposed amended designation in the *Federal Register* as a notice and requesting comments.

II. Background.

Under 49 U.S.C. 40123, certain voluntarily provided safety and security information is protected from disclosure to encourage persons to provide the information to the FAA. The FAA must issue an order making certain findings before the information is protected from disclosure. Part 193 describes the notice procedure for the FAA to designate information as protected. If the Administrator issues an order designating information as protected under 49 U.S.C. 40123, that information will be exempt from public disclosure under FOIA exemption 3. Such information will not be disclosed under FOIA, or other laws except as provided in 49 U.S.C. 40123, 14 CFR part 193, and the order designating the information as protected.

III. Summary of the ASAP Voluntary Information Sharing Program.

¹ See FAA Order 8000.82 at 68 FR 54767 (September 18, 2003).

A. *Who may participate?* Under AC 120-66C, air carriers, repair stations, and other entities (collectively referred to as “eligible entities”) who have an FAA-approved ASAP, and their covered employees, may participate in ASAP. The proposed amended designation, *i.e.*, Order 8000.82A, covers the expansion of ASAP to such eligible entities. In contrast, the prior AC 120-66B and the original designation, *i.e.*, Order 8000.82, were only intended to apply to air carriers that operated under 14 CFR part 121 and for domestic repair stations certificated under 14 CFR part 145 that have an FAA-accepted ASAP and their covered employees.

B. *What voluntarily provided information would be protected from disclosure under this proposed amended designation?* The type of information to be protected in proposed Order 8000.82A remains the same as in Order 8000.82.

The following information would be protected from disclosure when provided in a report to the FAA that meets the acceptance criteria under the ASAP Program:

- (1) The employee’s ASAP report, and the content of that report.
- (2) The identity of the eligible entity associated with an accepted ASAP report.
- (3) The name of the employee who submits an accepted ASAP report(s).
- (4) The information from sources other than the FAA of an Event Review Committee (ERC) investigation concerning an accepted ASAP report.
- (5) Evidence and other information gathered during an ERC investigation by persons other than the FAA.
- (6) Statistical analysis and trend information provided by the eligible entity that is based on events reported under a particular eligible entity’s ASAP.
- (7) An eligible entity’s database of reports and events collected over time from that eligible entity’s ASAP.
- (8) Corrective action on sole source reports when such corrective action is successfully completed.

In accordance with Section 320 of the FAA Reauthorization Act of 2018, Pub. L. 115-254, 132 Stat. 3270 (Oct. 5, 2018), ASAP reports that are excluded do not receive protection under 49 U.S.C. 40123.

C. *How do you participate?* Eligible entities, as described in this proposed amendment, participate by executing an ASAP memorandum of understanding (MOU) with the FAA and by voluntarily sharing information from the ASAP with the FAA.

D. *What is the duration of this information-sharing program?* This information-sharing program continues for a given eligible entity until the associated ASAP MOU is terminated by any of the parties to the MOU.

IV. Proposed Findings.

The FAA proposes to designate information in an accepted ASAP report received from an eligible entity under its FAA-approved ASAP program in accordance with this amendment as protected under 49 U.S.C. 40123 and 14 CFR 193.7. The FAA proposes this designation based on the following findings made under 14 CFR 193.11(c).

A. *Summary of why the FAA finds that the information will be provided voluntarily.*

The protection that resulted from Order 8000.82 alleviated concerns of ASAP-holding entities that disclosure of voluntarily submitted information could result in its use for other than the safety enhancement purposes for which the ASAP was created. Further, under ASAP, the FAA takes no action against an individual who submits a report that is accepted (and not subsequently excluded). The history of protection under ASAP and the enforcement-related incentive encourage voluntary submission of the information. Therefore, the FAA finds that eligible entities will voluntarily provide ASAP information to the FAA. Additionally, since the implementation of the original part 193 ASAP program, the FAA has seen an increase in the sharing of ASAP information with the FAA

beyond the FAA ERC representative by those originally covered under the program, and expects a similar increase as the program is expanded to other entities.

B. Description of the type of information that may be voluntarily provided under the amended program and a summary of why the FAA finds that the information is safety- or security-related.

The FAA expects the eligible entities covered under the proposed designation will share the same type of information as entities covered under Order 8000.82. An ASAP is created specifically to provide a means for employees to report safety-related events. All individual ASAP reports are clearly labeled as such and must be signed by each employee seeking the enforcement incentives available under an ASAP. Two types of reports are ordinarily submitted under the ASAP: (1) safety-related reports that appear to involve one or more violations of the regulations (e.g., deviating from an Air Traffic Control (ATC)-assigned altitude); and (2) reports that identify a general safety concern, but do not appear to involve a violation of the regulations (e.g., flight crewmember concerns that the design of a flight checklist could lead to an error).

Each ASAP report must contain sufficiently detailed information about a safety event so that it can be evaluated by a third party. If the report is submitted by a flight crewmember, and the safety event involves a deviation from an ATC clearance, the ASAP report would include the date, time, place, altitude, flight number, and ATC frequency, along with a description of the safety-related event. The only types of reports that are expected to be submitted under an ASAP are those that are safety- or security-related.

C. Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.

Eligible entities and their employees are reluctant to share sensitive safety information with the FAA, including employee self-reports of alleged violations, if such

submissions might be subject to public disclosure. Among other reasons, entities are concerned that the disclosure of voluntarily provided information to the public could be incomplete, unreliable, and sensitive. As a result, entities are concerned that disclosure of such information could unduly and adversely affect competitive advantage and public perception, and would be used for other than the safety enhancement purposes for which the ASAP was created. Individuals are concerned that disclosure of their reports would adversely affect their privacy interests.

D. *Summary of why the receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities.*

The FAA finds that receipt of ASAP information aids in fulfilling the FAA's safety and security responsibilities because of its capacity to provide early identification of needed safety improvements. An ASAP offers significant potential for incident and accident avoidance. FAA experience has clearly established that an ASAP can produce safety-related data that is not available from any other source. For example, ASAP reports concerning altitude deviations have identified common causal factors that produce such incidents. Receipt of this previously unavailable information has provided the FAA with an improved basis for modifying procedures, policies, and regulations in order to improve safety and efficiency.

E. *Summary of why withholding such information from disclosure would be consistent with the FAA's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the FAA's safety and security responsibilities, as described in 14 CFR 193.9.*

Withholding ASAP information from disclosure is consistent with the FAA's safety and security responsibilities because, unless the FAA can provide assurance that it will not be disclosed, the FAA will likely not receive the information. If the FAA does

not receive the information, the FAA will be hampered in efforts to understand safety-related issues within an eligible entity's operational environment and ensure safety improvements that receipt of the information otherwise enables.

The FAA may disclose information submitted to the agency that is designated as protected under part 193 when withholding it would not be consistent with the FAA's safety and security responsibilities under the circumstances described in 14 CFR 193.9(a)(1)-(4). For example, to explain the need for changes in FAA policies, procedures, and regulations, the FAA may disclose de-identified (i.e., no eligible entity or employee identity) and summarized information that has been derived from ASAP information or extracted from reports under ASAP. The FAA may disclose de-identified or summarized ASAP information that identifies a systemic problem in the aviation system when other people need to be advised of the problem in order to take corrective action.

F. Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.

The process for distinguishing information from the eligible entities as protected will remain unchanged. All employee ASAP reports are clearly labeled as such. A single report must be signed by all employees seeking the enforcement incentives available under an ASAP for the event. Any such employee must submit a separate signed report.

Any other information received by the FAA from the eligible entity concerning the content of ASAP reports (such as statistical analyses, program review reports, and trend information), must be clearly labeled as follows in order to be protected under this designation:

WARNING: The information in this document may be protected from disclosure under 49 U.S.C., section 40123 and 14 CFR part 193.

G. Proposed Designation.

Accordingly, the FAA hereby proposes to designate the previously described information to be protected from disclosure in accordance with 49 U.S.C. 40123 and 14 CFR part 193, when submitted pursuant to an approved ASAP program.

V. Comments Invited

The FAA invites interested persons to comment on the proposed amended designation by submitting written comments, data, views. The Agency also invites comments relating to the economic, environmental, energy, or federalism, impacts that might result from adopting the proposal in this notice.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed designation. Before taking action on this proposed designation, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The Agency may change this proposal in light of the comments it receives.

VI. Availability of Proposed Designation

An electronic copy of the proposed designation may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (<https://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies web page at https://www.faa.gov/regulations_policies; or
3. Accessing the Government Publishing Office's web page at <https://www.govinfo.gov>.

Issued in Washington, DC.

Robert C. Carty,

Acting Executive Director, Flight Standards Service.

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